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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/176,866	10/22/98	YOUNG	J 6996

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EXAMINER

DEMILLE, D

ART UNIT	PAPER NUMBER
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3764

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DATE MAILED:

08/21/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/176,866

Applicant(s)

YOUNG, JAMES V.

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. **Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Holt.** It is maintained that Holt teaches everything claimed. While the Holt device is different from the instant invention, the claims do not define over Holt. Figure 2 shows a massage head driven by a motor through a cable 12 (figure 1). Figure 4 shows the applicator is removably mounted by the screw threads in the top of element 20. Element 25 forms a plurality of cavities 26 permitting skin to be drawn inwardly of it. In the center section of element 20 is a passageway or connection tube for communicating with a suction line from the vacuum pump. It would appear Holt includes all of the positively claimed limitations in the claim.

Claim Rejections - 35 USC § 103

2. **Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt.** Regarding claim 2, Holt appears silent with regard to any controls for the motor however, the ability to adjust the speed of the motor is well within the realm of the artisan of ordinary skill. It would have been obvious to one of ordinary skill in the art to modify Holt to provide speed control for the motor in order to adjust the vibration of the device. Regarding claim 3, it would have been obvious to one of ordinary skill in the art to modify Holt to provide a collection vile for the vacuum in order to catch any particulate matter from blowing all over from the motor. Holt show holes in the sides of the housing allowing any particulate matter to blow all over the area. Most vacuum cleaners have a collection means for capturing the particulate matter.

Response to Arguments

6. Applicant's arguments filed 15 June 2000 have been fully considered but they are not persuasive. Applicant argues that Holt's device has a plate 28 that prevent material from being drawn into the air passage. While this may be true there are no claim limitations to define over this. Holt may teach this additional plate structure however, there appears to be no claimed limitations which would preclude such a structure. Since the claims do not preclude the presents of the plate 28 in Holt it is not clear how much weight can be given these arguments. Moreover, the plate structure may prevent some material from being drawn into the air passage it will not prevent all material from being drawn into the air passage. Any material such as fluids would simply go around the plate 28 will still be sucked into the air passage. Therefore it would appear that Holt's device would still perform the function of collecting additional material such as fluids. The Holt device would still allow fluids to pass around the plate into the air passage. That is why it would be necessary for additional collection containers as taught by Howerin. Fluids getting past the plate would then directly enter the motor where it could damage parts. Providing a means to collect any fluids would imperative. Robinson teaches that fluids are often used during massaging and filtering out these fluids would be necessary.

7. The secondary references are not cited to teach applicant's disclosed invention. They are secondary references which teach the convention of motor controls as taught by Marshall, the details of additional filtering means as taught by Howerin and Rohrer for the shape of the applicator.

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3. **Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Howerin.** It would have been obvious to one of ordinary skill in the art to modify Holt to provide a second vile in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.

4. **Claims 6, 7, 9 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Marshall et al. and Rohrer.** Holt appears silent with regard to the details of the controls of the motor. Providing some conventional means to control the motor would appear to be well within the realm of the artisan of ordinary skill. Marshall teaches a conventional vacuum massaging system which includes controls for both the vibrator and the vacuum source. There also appears to be no unobviousness to the shape of the applicator. Shaping the applicator to be concave as taught by Rohrer to better conform to the shape of the human body would have been an obvious provision. It would have been obvious to one of ordinary skill in the art to modify Holt to use a motor control system as taught by Marshall to best control the operation of the device and to shape the applicator to be concave as taught by Rohrer to better conform to the shape of the human body. If the vibration of Holt's device is too much it would be obvious to turn down the speed of the motor. Means to provide such a function would be necessary.

5. **Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 18 above, and further in view of Howerin.** It would have been obvious to one of ordinary skill in the art to further modify Holt to provide a second vile in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.

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Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

ddd
15 August, 2000
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